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The President's Advisory Panel on Federal Tax Reform
1440 New York Avenue NW Suite 2100
Washington, DC 20220

Dear esteemed members of the committee,

As you consider revisions to the current United States Tax Code I would like you to consider the following inequity and unfairness that is in the current system. An increasingly large number of employers are offering Domestic Partner benefits to unmarried opposite sex and same sex couples.

The Internal Revenue Service has ruled that domestic partners can not be considered spouses for tax purposes. Thus, employers are obligated to report and withhold taxes on the fair market value of the domestic partner coverage. This is not true for health insurance coverage for legal spouses, which is not taxable income to the employee. The fair market value of the domestic partner coverage is usually the amount the employer contributes to a health plan to cover the domestic partner, over and above the amount contributed for single and/or dependent coverage. Domestic partner benefits may be considered non-taxable only if the domestic partner meets the IRS definition of a "dependent." Internal Revenue Code (IRC) Section 152 defines a dependent as someone who resides in the employee's household and who receives at least half of their support from the employee.

In recent years, some employers have begun to allow their employees to make pre-tax contributions to so-called "flexible spending accounts." The money contributed to these accounts known officially as IRC Section 125 cafeteria plans -- can go to medical expenses not covered by health insurance, such as prescription eyeglasses, medicines, psychological counseling and the like. In addition, employees covered by such cafeteria plans are allowed to use pre-tax dollars to pay their health insurance premiums. But unless the domestic partner qualifies as a dependent under the IRS definition, premiums for domestic partner coverage cannot be offered on a pre-tax basis. And unless a domestic partner qualifies as a dependent, his or her out-of-pocket medical expenses cannot be paid out of a flexible spending account.

A small number of employers have chosen to offset this unfair taxation by paying the difference. (This process is called "grossing up," in employee benefits jargon.)

I am in a committed, loving relationship and recently married in Vancouver, BC (March 13, 2005). My new marital status comes after having been with my partner for 25 years. My spouse is a full time doctoral student and is able to receive health insurance benefits through my company's (Xerox Corporation) domestic partner benefits offerings. Those benefits are taxed where my married neighbor's benefits are not. Some domestic partners are unwilling, for various reasons, to be married. Some domestic partners are unable to be married.

I ask you to correct this wrong in the United States Tax Code and do not tax me for the exact same benefits for which my neighbor is not.

Sincerely,

Kim Y. Smith and Janet R. Macpherson